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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,217	10/11/2000	Vinroy Pennington	811	5629

7590 04/23/2002

Law Offices of John D Gugliotta P E Esq
202 Delaware Building
137 South Main Street
Akron, OH 44308

EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/686,217

Applicant(s)

VINROY PENNINGTON

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Detailed Action

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

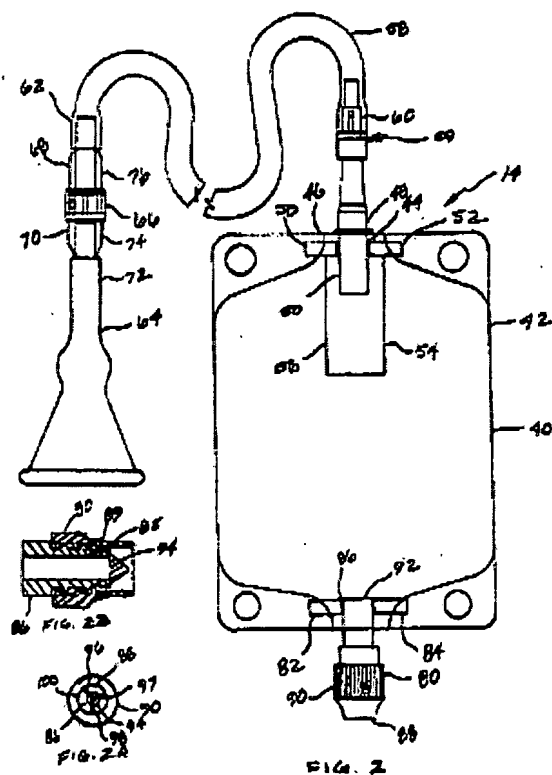
The changes made to 35 U.S.C. § 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. § 122(b). Therefore, this application is examined under 35 U.S.C. § 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. § 102(e)).

Claim 1, 2, 4, 5 and 7-9 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Edwards* (6,296,627).

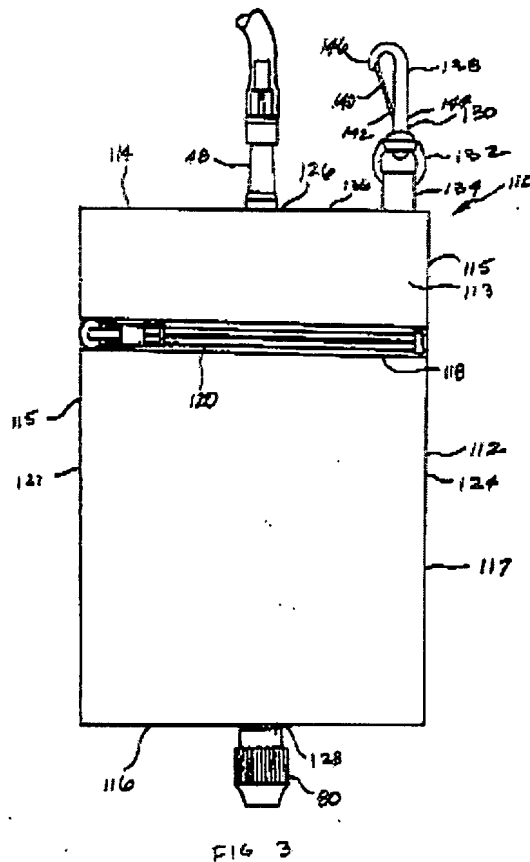
Regarding claim 1, *Edwards* teaches a urinal kit (14) comprising:

a urine receptacle (42);

and a series of specifically adapted collector funnels (64) each forming a collector receiver, each said collector funnel (64) for interchangeable connection with said urine receptacle (42) in order for providing fluid communication thereto (*see* Fig. 2, below).



Regarding claim 2, *Edwards et al.* teach a centrally disposed collection receiver (110) having a front receiver surface (113) parallel to and opposite a rear receiver surface (115), each said surface (113)(115) supporting a pocket forming an internal volume and having an entry orifice (118) releasably closed by a pocket flap (120)(see Fig. 3, below).

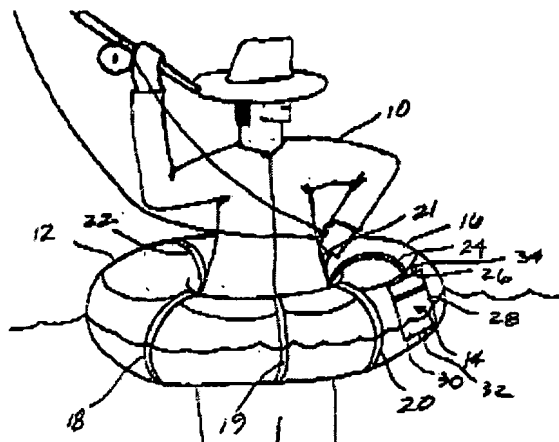


Regarding claim 4, *Edwards* teaches a discharge orifice (88) affixed along a lowermost seam of the collection receiver (42), said receiver discharge (88) in fluid communication with the internal volume of the collection receiver (42), and

a discharge valve (80) terminating said receiver discharge (88) for controllably releasing the contents of the collection receiver (42).

Regarding claim 5, *Edwards et al.* teach a collection conduit (58) along an uppermost seam (46) of the collection receiver (42), said collection conduit (58) in fluid communication with the internal volume of the collection receiver (42) and has a releasable connection (62) for connection with any of said other funnels (64).

Regarding claim 7, *Edwards* teaches a support attachment (24) affixed to said urine receptacle (see Fig. 1, below).



Regarding claims 8 and 9, *Edwards* teaches a male collector funnel (64); and a female collector funnel (col. 5, line 64).

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

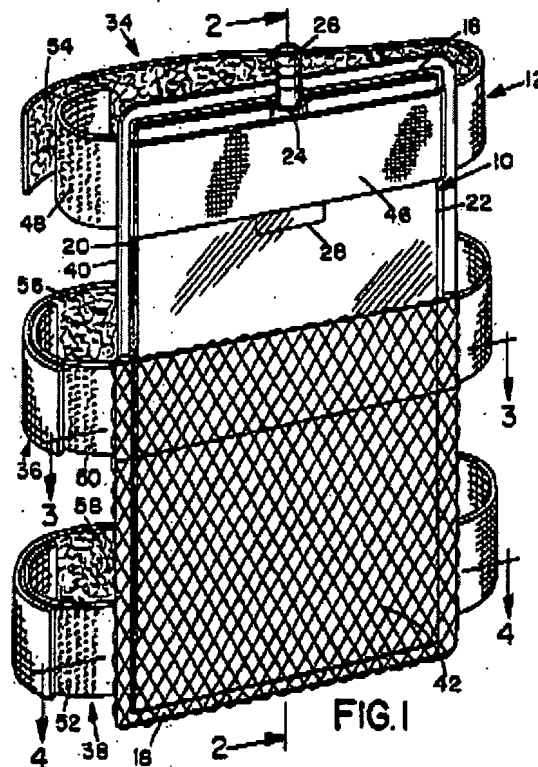
This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

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Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edwards* as applied to claims 1, 2, 4, 5 and 7-9 above, and further in view of *Young et al.* (5,531,724).

Edwards expressly teaches every element of the claimed invention except for the grasping loops.

Young et al. teach urinal kit (10) comprising a lower support loop (38) affixed along the lower portion of a front receiver (40); and an upper support loop (34) affixed along the upper portion of the rear receiver (46)(see Fig. 1, below).

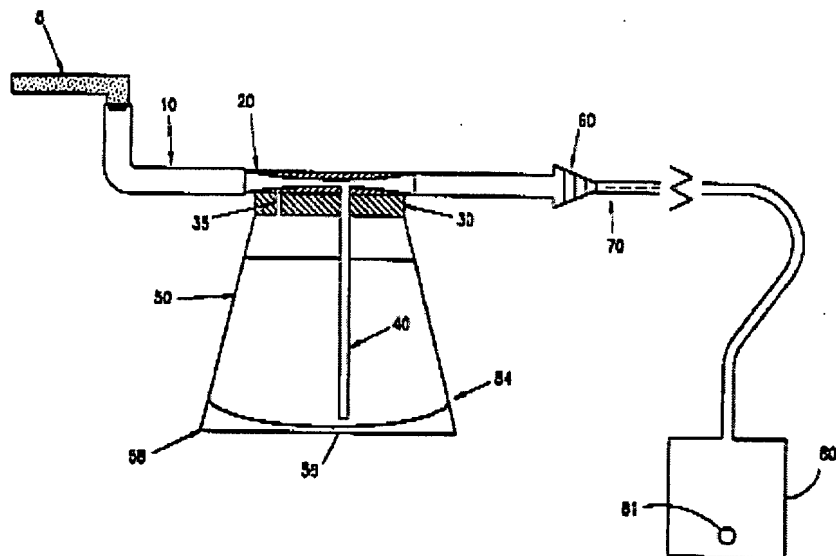


At the time of the invention, it would have been obvious to one of ordinary skill in the art to combine the upper and lower loop configuration of *Young et al.* with the urine bag system taught by *Edwards* in order to facilitate carrying of the device.

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edwards* as applied to claims 1, 2, 4, 5 and 7-9 above, and further in view of *Rower et al.* (6,039,060).

Edwards expressly teaches every element of the claimed invention except for the receiver flushing port.

Rower et al. teach a urine bag with a receiver flushing port (60)(see Fig. 1, below).

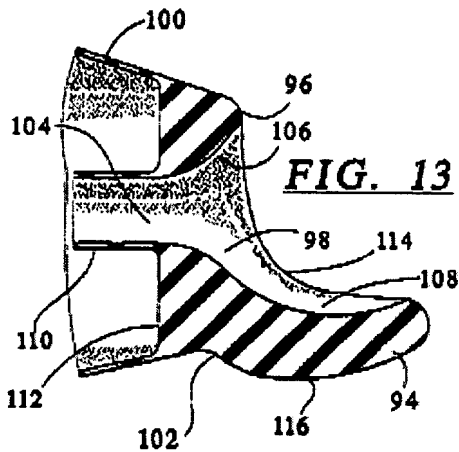


At the time of the invention, it would have been obvious to one of ordinary skill in the art to combine the receiver flushing port of *Rower* with the urine bag system taught by *Edwards* in order to provide a cleansing system for the bag (see *Rower* abstract).

Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edwards* as applied to claims 1, 2, 4, 5 and 7-9 above, and further in view of *Levine et al.* (6,183,454).

Edwards expressly teaches every element of the claimed invention except for the specific structure of the female collector funnel.

Levine et al. teach such a female collector funnel, see Fig. 10, below.



At the time of the invention, it would have been obvious to one of ordinary skill in the art to combine the female collector of *Levine et al.* with the urine bag system taught by *Edwards* in order provide compatibility for female users (*Edwards*, col. 5, line 64).

Response to Arguments

Applicant's arguments filed 4/5/2002 have been fully considered but they are not persuasive.

Regarding the rejection of claims 1, 2, 4, 5, 7, 8 and 9, applicant asserts that many differences exist between the design claimed by *Edwards* and the currently claimed design. This argument is not persuasive because a 35 USC § 102(e) rejection may rely on any part of the patent. MPEP 2136.02. Under 35 USC § 102(e), the entire disclosure of a U.S. patent having an earlier filing date can be relied on to reject the claims. *Sun Studs, Inc. v. ATA Equip. Leasing, Inc.*, 872 F.2d 978, 983, 10 USPQ2d 1338, 1342 (Fed. Cir. 1989). During patent examination, claims must be given their broadest reasonable interpretation. MPEP 2111. The presently claimed invention employs the transitional phrase "comprising" in the claims. When employed

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as a transitional phrase in a patent claim, the term “comprising” is interpreted as being inclusive or open-ended and does not exclude additional unrecited elements. MPEP 2111.03. As detailed above, *Edwards* expressly teaches each and every element of the claimed invention. A failure of the reference to claim every element of the claimed invention does not preclude a rejection under 35 USC § 102(e). Neither does any teachings of the reference in addition to what is claimed by the present invention.

Applicant further argues that *Edwards* does not anticipate a kit configuration, a series of collector funnels each forming a collector receiver, each funnel being interchangeable, and the funnels include a male and a female collector funnel. This argument is not persuasive because the Examiner interprets *Edward's* urine collection system (14) as a kit. Receptacle device (64) is a funnel which interchangeable, and may be either male or female (see Col. 5, line 62- Col. 6, line 15).

Regarding claim 3, applicant asserts that *Young et al.* claim only a method for sequestering in a bag. As noted above, this argument is not persuasive because a 35 USC § 102(e) rejection may rely on any part of the patent. MPEP 2136.02. Irrespective of what is claimed by the reference, *Young et al.* teach urinal kit (10) comprising a lower support loop (38) affixed along the lower portion of a front receiver (40); and an upper support loop (34) affixed along the upper portion of the rear receiver (46). The elements in combination with the teachings of *Edwards*, teach each and every element of the claimed invention.

Further regarding claim 3, applicant argues that there is no suggestion as to the desirability of any modification of the references to describe the present invention. In response to applicant's argument that there is no suggestion to combine the references, the examiner

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recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, *Edwards* teaches a device (34) for attaching the urine receptacle to a float tube. This device may be in the form of a support loop (134). It would be obvious to add an additional loop either to attach the receptacle to the inner tube or to carry the device by hand. *Young et al.* teach such a multiplicity of loops.

Regarding claim 6, applicant asserts that *Rower* discloses a venturi system and claims a method for cleaning medical devices. Applicants argue that *Edwards* and *Rower* together do not teach every element of the claimed invention. This argument is not persuasive because as described above, *Edwards* expressly teaches every element of the claimed invention except for the receiver flushing port, and *Rower et al.* teach a urine bag with a receiver flushing port (60), thus in combination expressly teaching every element of the claimed invention.

Further regarding claim 6, applicants argue that there is no suggestion as to the desirability of combining the references. This argument is not persuasive because *Rower* at col. 1, lines 11-26, and col. 3, lines 42-57 describes the purpose and nature of the invention, which is to clean medical bags, such as those to collect urine. *Edwards* teaches a urine bag. Providing for the cleaning of such a urine bag, regardless of what it is attached to, is the very purpose of the *Rower* patent.

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Regarding claim 10, applicant asserts that *Levine et al.* disclose and teach only a urinary collection device for human females. Applicant argues that the references do not teach every element of the claimed invention. This argument is not persuasive because as detailed above, *Edwards* expressly teaches every element of the claimed invention except for the specific structure of the female collector funnel. *Levine et al.* teach such a female collector funnel. Applicants further argue that there is no suggestion to combine the references. This argument is not persuasive because *Edwards*, at col. 5, line 64, expressly describes the suitability of a female urine cup as a collector for the disclosed invention.

Regarding claims 3, 6 and 10, applicants argue that nothing in the prior art that teaches the obviousness of making an emergency urinal kit that “consists” of a small rubber collection funnel, attached to a connecting hose and a inlet valve and having an air relief valve and an exit valve on the bottom. As detailed above in the rejection under 35 USC § 102, *Edwards* teaches a urinary kit (14) with a collection funnel (64) attached to a connecting hose (58) and having an exit valve (80) on the bottom. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., air relief valve) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Also, as noted above, the claims employ the transitional phrase “comprising,” not “consisting.”

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so

long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

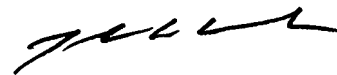
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (703) 605-1184. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached at telephone number (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for informal communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0858.


Michael Bogart
April 17, 2002



**Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01**

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.